

Sung Kwon

From: George Rodericks
Sent: Friday, April 14, 2023 10:15 AM
To: Michael Greenlee; Sung Kwon
Subject: Fwd: Affordable housing solution for Atherton

Another.

George Rodericks
City Manager
Town of Atherton
80 Fair Oaks Lane
Atherton, CA 94027
(650) 752-0504 - Office
grodericks@ci.atherton.ca.us

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Begin forwarded message:

From: Jeff Corfman <jeff@jccapitalmanagement.com>
Date: April 13, 2023 at 7:35:54 PM PDT
To: billwidmer4atherton@gmail.com
Subject: Affordable housing solution for Atherton

Dear Mayor Widmer,

I am talking to the Del Mar Mayor and City Council about options for their affordable housing mandate from the State.

Del Mar, needs over 100 units to meet housing requirements. We are talking about pre-fab ADUs.

Pre-fab ADUs are ;

1. low cost \$250k vs. traditional construction \$700k
2. installation time is days/weeks vs years
3. environmentally friendly solar and tiny footprint vs traditional construction
4. use cases are numerous (elderly, student, family, etc)

Pre-fab ADUs are on foundation, connected to plumbing and electric but with solar, net net electricity donor to the grid. Some of the new startups have beautiful new designs. If you or anyone in your office wants to talk about it to see if there is overlap in Atherton please give me a call anytime.

Regards,

Jeff Corfman
212.203.8178

Sung Kwon

From: Kenneth Frederick <kfrederick@stratumtech.com>
Sent: Thursday, April 20, 2023 10:30 AM
To: Sung Kwon
Cc: George Rodericks
Subject: Follow-up on our ADU discussion from April 6th
Attachments: Barriers to ADU proliferation in Atherton.docx

[The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.]

Sung:

It was good to meet you & hear your comments on an update to Atherton's ADU policy. As I understand it, you plan to:

- 1) Review the current ADU policy
- 2) Meet with residents in a small "Town Hall" session
- 3) Issue a proposed new ADU Policy for the Town Council's review and approval
 - Including a "Study Session" with the Town Council on May 3rd

I promised to send you a summary of options that I collected from residents about a month ago - See Attachment. Several specific notes:

- 1) Time to completion is the primary driving cost of ADU's
 - The Town should simplify & streamline the process
- 2) The "Tree Zone" issue is solvable and should be addressed ASAP
- 3) The legality of the ban on natural gas in ADU's is now in question (Based on the recent Ninth District Court rejection of the ban)
 - The Town should at least "put the natural gas ban on hold" until the issue plays out in the courts
- 4) The residents should be involved in the actual drafting of the new ordinance, not just speak at a "Town Meeting".

I look forward to the discussions on May 3rd.

Best regards,

Ken

Kenneth C. Frederick
Silicon Valley, CA
kfrederick@stratumtech.com
(650) 279-9580

Barriers to ADU increase in Atherton: – *Draft 3/23*

Background/Summary:

Although the Atherton Town Council has proposed >280 ADU units in the next 8 years, the actual current rate of specific (not part of a large new house construction) ADU adoption in Atherton is relatively unknown/undocumented, but estimated by those knowledgeable to be quite low. The San Mateo RE tax appraiser indicates that almost all ADU's she sees in Atherton are a part of a new construction. Her "off the cuff" estimate was ~10-12 per year are built as new ADU's in a back yard. Since the Town plans an average of 35+/year over the entire 8 years we will have to remove all feasible & appropriate barriers to such ADU construction.

Three categories of barriers to more ADU construction exist. They are ones that Atherton Town Council has:

- A) **NO direct control**, but can worsen the situation:
- B) **Total**, or very significant **control**
- C) **Some control** & very significant influence

Category A): Atherton has No direct control:

- The Resident's Ability to afford to build an ADU:

- 1) Current economic & geopolitical outlooks are quite worrisome to residents & many are very reluctant to make an economic decision that will "lock" them into a major capital investment (~ \$500K→\$1M) that will require ongoing significantly increased monthly cash payments (mortgage, maintenance, utilities, RE taxes, etc.) for life!
- 2) As Home loans increase from a few % points to >7% the construction of an ADU is much less affordable & fewer residents can build one
- 3) The Town Council cannot resolve the Global & Regional economic issues, but any additional code restrictions or other requirements for building ADU's will only make it harder for residents to economically & emotionally justify the expense
 - For example banning natural gas connections to ADUs means the homeowner will unable to have a gas fireplace, gas cooking, gas-fed BBQ, etc. and emergency electrical power generators fed by natural gas

In order to enable/encourage residents to build significantly more ADU's the Town must eliminate/reduce key barriers – And, do so quickly, clearly & make the entire process "simple"!

The goals are to make the ADU decision & entire process for residents:

- 1) **Clear & Simple**
- 2) **As rapid as possible (From application to the completed project)**
- 3) **As economical as possible (Delays that create a longer timeframe are often the greatest driver of higher ADU construction costs)**

Category B): Atherton has Total Control

B.1) “Red Tape”:

- Atherton must understand all the current bottlenecks & then document the issues & create a simple, rapid way to reduce all “Red Tape”
- This includes requirements by Atherton, San Mateo Co. & the State
- Any increase in ADU construction unit volume may “overwhelm” the current process labyrinth of governmental (all levels) approvals & required site inspections
- The current process is very lengthy & costly (all time delays are very expensive for the homeowner) & the impact on homeowners is not always apparent to the Town
- Increased ADU construction volume with the same process may create a combination of additional delays & additional hiring of Gov’t staff at various levels

Possible Solution:

- Hire/Contract an Atherton ADU “Ombudsman” (Reporting to the Council) to propose process improvements at all levels
- Start with those controlled by Atherton & move quickly to San Mateo County
- The residents should not have to deal with a multitude of agencies/bureaucracies
- If the process is too difficult, many residents just will not have the time or energy to complete the process!
- The Town Council & Town Staff may not see this as an issue, but many residents do

B.2 The “Tree Zones”:

- The current required 10x & 8x tree diameter distance to new buildings requirement makes many Atherton lots “unbuildable” or “unsuitable” for a larger ADU
- We all want to save our Heritage trees, & new foundation technology/processes will allow much less distance requirements & still maintain/improve the health of the trees

Possible Solution:

- Work with an Arborist, Tree Services Company & Civil Engineering/Foundation technology expert to propose new techniques/technologies that can be verified to both reduce the distance minimums & maintain/improve tree health
- Create a “Standard Process” that is clear & simple and does not require time consuming & expensive specific individual case “waivers”

A Specific Possible Solution:

- “Screw Piling Foundation” – A technology used widely in in many parts of the country uses metal screwed-in pilings that do not disturb the soil in large areas

- The foundation is then constructed on the screw pilings (slightly above the ground) & the tree roots are not disturbed & receive appropriate water, etc.

C) Atherton Has Some Control & Influence:

San Mateo RE Taxes:

- The current process is cumbersome & the homeowner's final new RE tax is unknown until the construction is complete.
- Thus, many "long term" residents will have their San Mateo taxes more than double, but they don't know the new annual Tax cost until completed & inspected.
- Many residents (particularly those "retired") are reluctant to lock-in future, long-term costs that are "unknown" before the decision is made.

Possible Solution:

- Atherton negotiates a "Blanket RE Tax Agreement" with San Mateo Co. for the calendar year that sets a new Tax rate per sq. ft..
- Thus, if your ADU is completed in that year, the homeowner is assured that they know the new tax by just multiplying their ADU sq. ft, times the negotiated rate.
- The homeowner has "certainty" & can make an informed decision in advance
- Better yet, the new tax rate should be calculated on the actual "Building cost per sq. ft." & not the average home value in Atherton/sq. ft.

Note:

- *This will require the Mayor & Town Council to work with other local towns to negotiate concepts & details with the County.*
- *In conversations with residents considering ADU's in surrounding towns, these issues are prevalent in our general area. However, the "Tree Zone" issue is more prevalent in Atherton due to the large number of heritage trees that we all want to preserve.*

From: [Kenneth Frederick](#)
To: [Sung Kwon](#)
Cc: [George Rodericks](#)
Subject: May 3rd & ADU discussion
Date: 24 April, 2023 3:12:37 PM
Attachments: [Ninth Circuit Overturns Berkeley's Natural Gas Ban — Reichman Jorgensen Lehman Feldberg LLP.pdf](#)

[The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.]

Sung:

I appreciate your extra efforts & look forward to the discussion on May 3rd at the Study Session. Given the Town's dependence on accelerating the construction of more ADU's to meet the HCD goals, it is important to enable residents to design and construct ADU's that both meet their personal specific needs and are affordable.

As you are undoubtedly aware, there is also a lot of interest by Atherton residents in the Town's reaction to the 9th Circuit Court's overturning of Berkeley's ban on using natural gas in new residential buildings. (see attachment) We assume that the Town will now remove that bans on Natural gas that are in Code 15.19 & new ADU's will be able to use natural gas.

Best,

Ken

Kenneth C. Frederick
Silicon Valley, CA
kfrederick@stratumtech.com
(650) 279-9580

From: Sung Kwon <skwon@ci.atherton.ca.us>
Date: Monday, April 24, 2023 at 8:46 AM
To: Ken Frederick <kfrederick@stratumtech.com>
Cc: George Rodericks <grodericks@ci.atherton.ca.us>
Subject: RE: Follow-up on our ADU discussion from April 6th

Hi Kenneth,

Thank you for your comments. I will add them to the Study Session Packet for the May 3.

Sincerely,

Sung H. Kwon, MCRP MBA AICP
Principal Planner, M-Group

Consulting Town Planner
Town of Atherton
80 Fair Oaks Lane (New Town Center)
Atherton, CA 94027
(408) 796-4844

From: Kenneth Frederick <kfrederick@stratumtech.com>
Sent: Thursday, April 20, 2023 10:30 AM
To: Sung Kwon <skwon@ci.atherton.ca.us>
Cc: George Rodericks <grodericks@ci.atherton.ca.us>
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REICHMAN JORGENSEN
LEHMAN & FELDBERG LLP

APRIL 17, 2023

Reichman Jorgensen Lehman & Feldberg Secures Landmark Ninth Circuit Victory for California Restaurant Association in Battle Over Berkeley's Gas Ban

(April 17, 2023) REDWOOD SHORES, Calif. — [Reichman Jorgensen Lehman & Feldberg LLP](#) (RJLF) secured a precedent-setting victory on behalf of the California Restaurant Association (CRA) against the City of Berkeley, overturning Berkeley's ban on natural gas hookups. The Ninth Circuit reversed the District Court's ruling that the City's natural gas ban was consistent with federal law. The panel unanimously held that federal energy law preempts Berkeley's ban on natural gas piping within buildings, and that Berkeley cannot bypass federal preemption by banning the pipes instead of natural gas products themselves.

"We are extremely pleased the Ninth Circuit enforced the plain mandate of federal law on the critical issue of national energy policy," Courtland L. Reichman, RJLF's Managing Partner, said. "At stake was the CRA members' ability to conduct business in the state of California, which puts not only the future of restaurants at risk, but also the vibrant culture and the jobs that those restaurants bring to the area."

Berkeley Ordinance No. 7,672-N.S. banned natural gas infrastructure and the use of natural gas in newly constructed buildings beginning January 1, 2020, making Berkeley the first city in California to take such action. The case challenged the practice of cities across California of usurping state and federal regulations governing the use of energy in buildings.

"Congress intended to set a national energy policy, and cities and states cannot bypass federal preemption by regulating piping instead of natural gas products," RJLF partner Sarah O. Jorgensen shared. "The panel's unanimous decision that Berkeley's ban on natural gas piping is preempted by EPCA sets an important precedent for future cases, especially with other cities and states considering restrictions on natural gas, and it prevents a patchwork of disparate regulations and protects consumer choice."



**REICHMAN JORGENSEN
LEHMAN & FELDBERG LLP**

harms the CRA's members, who would not be able to move into or build new buildings while also preparing food in the manner and with the speed necessary and using a reliable and affordable energy source. The drastic step of requiring "all-electric" new buildings stands at odds with the need for a reliable, resilient, and affordable energy supply. The Berkeley Ordinance conflicts with both federal and state law, is contrary to the public interest, and harms CRA and its members, the CRA argued.

The District Court dismissed the complaint in July 2021, finding that the CRA had standing and the dispute was ripe, but disagreeing on the statutory interpretation of federal energy law. The CRA appealed that statutory interpretation to the Ninth Circuit. The significance of this first-in-the-nation attempt to ban natural gas at a local level prompted amici briefs from states, industry associations, and the Department of Justice. Brian C. Baran of RJLF argued the case for the CRA before a three-judge panel in May 2022.

Along with partners [Courtland L. Reichman](#) and [Sarah O. Jorgensen](#), the CRA is represented by associates [Brian C. Baran](#), [Laura Carwile](#), and [David King](#), as well as co-counsel [Gary J. Toman](#) from Weinberg, Wheeler, Hudgins, Gunn & Dial LLC and Kylie Chiseul Kim from Kellogg, Hansen, Todd, Evans, Figel & Frederick LLP.

The case is *California Restaurant Association v. City of Berkeley*, Case No. 21-16278 (9th Cir.).

About The California Restaurant Association

[The California Restaurant Association](#) (CRA) is the largest nonprofit statewide restaurant trade association in the nation. Representing the restaurant and hospitality industries since 1906, the CRA is made up of nearly 22,000 restaurant locations in California.

About Reichman Jorgensen Lehman & Feldberg LLP



REICHMAN JORGENSEN LEHMAN & FELDBERG LLP

about that advocacy. From offices in Silicon Valley, New York, Washington, D.C., and Atlanta, the firm tries cases and argues appeals throughout the country. For more information, visit www.reichmanjorgensen.com.



GCR Honors RJLF Trial Win with 2023 Behavioural Matter of the Year Award

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From: [Flaherty](#)
To: [Sung Kwon](#)
Subject: May 3rd Joint Session re. ADUs
Date: 26 April, 2023 10:32:50 AM
Attachments: [ADU Notes_Kwon.docx](#)

[The e-mail below is from an external source. Please do not open attachments or click links from an unknown or suspicious origin.]

Dear Sung:

My husband and I have been building spec homes in Atherton for 37 years (over 20 projects). We also build in LaJolla, Delmar, Coronado, Encinitas and Idaho: over 100 houses overall. I have met with Bill Widmer, George Roderick and Rick DeGolia several times re. ADU guidelines. I also sent the City Council a list of recommendations (attached) for consideration. I doubt they made it to your attention. I pass the recommendations along for any that you feel might be appropriate.

I will also be at tonight's Planning Commission meeting. Perhaps we'll see each other there.

With best regards,
Carol Flaherty
Cell: 650-799-4592
Current construction project: 30 Adam Way

Biggest issues for Atherton residents wanting to add an ADU:

1. Existing tree locations.
2. Arduous and lengthy Building Dept. approval process, including high fees.
3. Current height restrictions on ADUs over garages.
4. Parking spaces. Garage and driveway are already installed at existing homes.

Detached ADUs:

- Need a streamlined permit process. Current processing time for new homes is 3-4+ months with many costly resubmissions. State mandate < 60 days.
 - For new construction projects: Separate the ADU and garage applications from the main residence. Would enable a faster permit to start ADU construction. Today, all three go hand-in-hand.
- Reduce Planning Commission fees for ADU tree variances. I was quoted almost \$2400 for a hearing, because I needed a variance for an oak tree that was 1 foot inside the 8x diameter distance from that tree to the proposed ADU. I would also have to wait two months for a hearing, because the next meeting's agenda was already full.
 - Give the City Arborist the authority to approve lesser tree distances for ADUs (4-6x diameter). ADUs are typically built on slab, which is far less intrusive to tree roots than basements. There's no need for an 8-10x tree diameter distance between the tree and the ADU.
 - Reduce fees for City Arborist to approve Tree Protection Zone (TPZ) applications/permit (a reduction from 10x diameter to 8x diameter). I paid \$888 for a TPZ reduction from 10x to 8x on 3 trees.
- ADU permit fees, in general, should be limited to more reasonable amounts. They are quite high. The number of necessary permits should also be reviewed. Maybe some could be consolidated under an "umbrella permit".
 - Eliminate or reduce the separate address fee.
- Eliminate the monthly arborist report (due by 15th of each month). Go to quarterly.
- Allow higher back or side fences (8') between two adjacent properties where one or both have an ADU. Would apply where ADU is 4' from property line.
- Must be same architectural style, window/door frame style & color, roof composition & color, and finish/siding as the existing main house. No particle board siding or metal siding.
- Waive the landscape shielding plan for ADUs that aren't part of new construction. There's very little opportunity for shielding when you're 4' from the property line on an existing lot. You have what you have.
- Allow one ADU vehicle to be parked on the existing driveway or in existing garage. No additional parking required for ADU.
- The 800SF limit allowance of "free" square footage is a problem for some existing homes. Many homes are already maxed out, and 800 SF is very small. I'd allow up to 1200 SF on parcels where the existing house is already built. 800SF is also too small for an ADU addition over a garage.

ADUs over existing garages:

- Must match footprint of existing garage and be of same architectural style, composition and color.
- Should be exempt from 8-10x distance between a protected tree and the building; lesser standard should be developed.
- Any exterior staircase must be enclosed and non-visible from the front street.
- If existing garage is greater than 1200 SF, additional space will be exempt from size restrictions to match existing footprint (up to a maximum 3-car garage area – you can't be exempt if you have a 6-car garage). For example, if an existing three-car garage is 1,300 SF, that would be allowed without counting the extra 100 SF towards the overall building allowance on the parcel.
- Must have fire sprinkler system.
- Requires inspection of existing garage foundation to insure adequacy of support.
- ? whether existing garage will require insulation and drywall.

Other: Where a home has an ADU, allow 8' fences at the back and sides. At current fence heights (6"), neighbors will look right onto the adjoining ADU windows and vice versa. Fence heights are too low for a 4' setback.